

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

RYAN ANTHONY SAVINELL

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:14-cv-341-HSO-JCG

HUBERT DAVIS, *et al.*

DEFENDANTS

**ORDER ADOPTING REPORT AND RECOMMENDATION AND
DISMISSING PLAINTIFF'S CLAIMS WITHOUT PREJUDICE**

This matter comes before the Court on the Report and Recommendation [32] of United States Magistrate Judge John C. Gargiulo, entered in this case on November 25, 2015. The Magistrate Judge recommended that Plaintiff Ryan Anthony Savinell's Complaint [1] be dismissed for his failure to obey Orders of the Court and failure to prosecute. R. & R. [32] at 3. After due consideration of the Report and Recommendation [32], the record, and relevant legal authorities, the Court finds that Plaintiff's claims asserted in this civil action should be dismissed without prejudice.

I. BACKGROUND

On September 4, 2014, Plaintiff Ryan Anthony Savinell ("Plaintiff") filed a Complaint [1] against Defendants Hubert Davis, Theresa Seabrook, Timothy Barnes, Alvin Moody, and Johnnie Denmark. On September 9, 2014, Plaintiff filed a Motion to Amend Complaint [5] and a Motion to Extend the Deadline for *in Forma Pauperis* [8], both of which advanced additional allegations against Defendants. The Magistrate Judge granted both Motions [5], [8] by Order [10]

entered on October 17, 2014. The Magistrate Judge held that “[t]he Court will consider the allegations contained within the pleadings,” and directed the Clerk of Court to add Elisha Buker and Karen McClain as Defendants. Order [10] at 1. Defendants have answered the Complaint [19], [24].

On October 6, 2015, the Magistrate Judge entered an Order Setting Omnibus Hearing [25] for Tuesday, November 10, 2015. Order [25] at 1-2. The Order was sent to Plaintiff via United States Postal Service certified mail, but the envelope containing the Order was returned to the Clerk of Court as “Not here, Refused,” unclaimed, and unable to forward. Returned Mail [30] at 1. Plaintiff did not appear at the omnibus hearing scheduled for November 10, 2015. *See* Nov. 10, 2015, Minute Entry. The Magistrate Judge entered a Show Cause Order [31] requiring Plaintiff to file a written response on or before November 24, 2015, “showing cause why his failure to appear at the omnibus hearing and to abide by the Court’s numerous Orders requiring him to keep the Court apprised of his current address should not result in dismissal of this suit for failure to prosecute.” Order [31] at 1. Plaintiff was “specifically warned that failure to comply with this Order by timely filing a written response will result in an immediate recommendation to the District Judge that this case be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(b).” *Id.* Plaintiff did not respond to the Show Cause Order.

On November 25, 2015, the Magistrate Judge entered a Report and Recommendation [32], recommending that Plaintiff’s Complaint be dismissed for

Plaintiff's failure to obey Orders of the Court and failure to prosecute. R. & R. [32] at 3. A copy of the Report and Recommendation was mailed to Plaintiff at his address of record via certified mail on November 25, 2015. Plaintiff has not objected to the Report and Recommendation, and the time for doing so has passed.

Plaintiff has not filed anything in this case since November 4, 2014, when he filed a Response [11] to the Magistrate Judge's Order [10] over a year ago. Nor has Plaintiff updated his mailing address with the Court, even though Plaintiff has been warned numerous times in Orders issued by the Magistrate Judge that failure to advise the Court of a change of address would be deemed as a purposeful delay and contumacious act by Plaintiff which could result in dismissal of this case. *See, e.g.,* Order [3] at 2; Order [4] at 2; Order [9] at 2; Order [12] at 3; Order [25] at 2.

II. DISCUSSION

Where no party has objected to a magistrate judge's report and recommendation, the Court need not conduct a de novo review of it. 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made."). In such cases, the Court applies the "clearly erroneous, abuse of discretion and contrary to law" standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Having conducted the required review, the Court concludes that the Magistrate Judge's findings are not clearly erroneous, nor are they an abuse of discretion or contrary to law. This Court has the authority to dismiss an action for

Plaintiff's failure to prosecute under Federal Rule of Civil Procedure 41(b), and under its inherent authority to dismiss the action sua sponte. *See Link v. Wabash Railroad*, 370 U.S. 626, 630-31 (1962); *McCullough v Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988). The Court must be able to clear its calendars of cases that remain dormant because of the inaction or dilatoriness of the parties seeking relief, so as to achieve the orderly and expeditious disposition of cases. Such a sanction is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the Court. *See Link*, 370 U.S. at 629-30.

Plaintiff did not comply with the Orders entered by the Magistrate Judge even after being warned that failure to do so might result in the dismissal of his lawsuit. Order [3] at 2; Order [4] at 2; Order [9] at 2; Order [12] at 3; Order [25] at 2. Plaintiff has filed nothing in this case since November 4, 2014. Such inaction represents a clear record of delay or contumacious conduct by Plaintiff. It is apparent to the Court that Plaintiff no longer wishes to pursue his case. Dismissal without prejudice is warranted.

III. CONCLUSION

For the foregoing reasons, the Court will adopt the Magistrate Judge's Report and Recommendation [32] as the opinion of this Court and will dismiss Plaintiff's claims without prejudice for failure to prosecute and for failure to comply with the Court's Orders.

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Report and Recommendation [32] of United States Magistrate Judge John C. Gargiulo, entered

in this case on November 25, 2015, is adopted in its entirety as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that, Plaintiff Ryan Anthony Savinell's claims against Defendants are **DISMISSED WITHOUT PREJUDICE**. A separate judgment in accordance with this Order will be entered, as required by Federal Rule of Civil Procedure 58.

SO ORDERED AND ADJUDGED, this the 8th day of January, 2016.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE